

Philip A. Goldstein (PAG-0908)
pagoldstein@mcguirewoods.com
McGuireWoods LLP
1345 Avenue of the Americas, 7th Floor
New York, New York 10105-0106
(212) 548-2100

Michael D. Mandel (pro hac vice)
mmandel@mcguirewoods.com
McGuireWoods LLP
1800 Century Park East, 8th Floor
Los Angeles, California 90067
(310) 315-8200

Counsel for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
JENNIFER SMITH,

Plaintiff,

v.

BANK OF AMERICA CORP., and
BANK OF AMERICA, N.A.,

Defendants.
----- X

: **ECF CASE**

: Case No. 11 CV 6368 (JBW)(JO)

: **DECLARATION OF PHILIP A.
: GOLDSTEIN IN SUPPORT OF
: DEFENDANTS' REPLY
: MEMORANDUM OF LAW IN
: SUPPORT OF THEIR MOTION TO
: DISMISS AND/OR STRIKE
: PORTIONS OF PLAINTIFF'S
: **COMPLAINT****

Philip A. Goldstein, being of full age, declares:

1. I am an associate with the law firm McGuireWoods LLP.
2. I, along with Michael D. Mandel, represent Defendants in the above-referenced matter. I have personal knowledge of the facts set forth herein.
3. Attached hereto as Exhibit 1 is a true and correct copy of the Federal Deposit Insurance Commission's ("FDIC's") "Statement of Policy Pursuant to Section 19 of the Federal Deposit Insurance Act Concerning Participation in the Conduct of the Affairs of an Insured Institution by Persons Who Have Been Convicted of Crimes Involving Dishonesty, Breach of

Trust or Money Laundering or Who Have Entered Pretrial Diversion Programs For Such Offenses,” 63 Fed. Reg. 66,177 (December 1, 1998).

4. Attached hereto as Exhibit 2 is a true and accurate copy of FDIC Opinion Letter 94-29, “*Pre-Trial Diversion Agreements and Other Similar Programs*” *Language in Section 19 Cases*, (June 22, 1993) (available at <http://www.fdic.gov/regulations/laws/rules/4000-9010.htm>)

5. Attached hereto as Exhibit 3 is a true and accurate copy of the slip opinion of an FDIC Order entered in the matter captioned *In re Cucu*, FDIC-08-341L.

6. Attached hereto as Exhibit 4 is a true and accurate copy of an FDIC Order entered in the matter captioned *In re Stewart*, FDIC-08-189L, 2010 FDIC Enf. Dec. LEXIS 439.

7. Attached hereto as Exhibit 5 is a true and accurate copy of Section 9-22.010 of the United States Attorney Manual.


8. Attached hereto as Exhibit 6 is a true and accurate copy of an FDIC Order entered in the matter captioned *In re Johnson*, FDIC-10-289L, 2010 FDIC Enf. Dec. LEXIS 438.

9. Attached hereto as Exhibit 7 is a true and accurate copy of an FDIC Order entered in the matter captioned *In re Ayala-Garcia*, FDIC-08-232L, 2009 FDIC Enf. Dec. LEXIS 67.

10. Attached hereto as Exhibit 8 is a true and accurate copy of FDIC Opinion Letter 94-27, *Applicability of Section 19 of the FDI Act When Pretrial Diversion Agreement Was Entered Into Before the Issuance of Formal Criminal Process*, (July 8, 1993) (available at <http://www.fdic.gov/regulations/laws/rules/4000-8990.htm>).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 16, 2012.


Philip A. Goldstein